

COMMISSIONERS TO REVISE THE STATUTES RELATING
TO PATENTS, ETC.

MAY 3, 1898.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. HICKS, from the Committee on Patents, submitted the following

REPORT.

[To accompany H. R. 9815.]

The Committee on Patents, to whom was referred the bill (H. R. 9815) appointing commissioners to revise the statutes relating to patents, trade and other marks, and trade and commercial names, submit the following report:

In 1870 the patent laws of the United States were revised and provision was first made for the registration of trade-marks.

Such laws were embodied in the Revised Statutes published in 1875, without substantial change.

In 1876 the trade-mark law was amended by adding a penal section.

In 1880 the United States was represented at a conference at Paris called by the French Government for the purpose of framing a convention for the protection of industrial property, including therein the general subjects of patents, trade-marks, and trade names.

March 20, 1883, the convention drafted at the conference of 1880 was ratified at Paris by France, Belgium, Brazil, Guatemala, Italy, Netherlands, Portugal, Salvador, Servia, Spain, and Switzerland.

In 1886 a conference under the convention met at Rome, and the United States was represented by a delegate, who took part by courtesy.

Between 1880 and 1887 no substantial change was made in the patent statutes. As to trade-marks, the laws of 1870-1876 were declared unconstitutional (*United States v. Steffens*, 100 U. S., 82), and a new law, applicable to trade-marks used in foreign commerce, was approved March 3, 1881. (21 Stat. L., p. 502; Sup. Rev. Stat., 2d ed., p. 322.)

In 1887 the United States adhered to the convention. (Treaties and Conventions between the United States and other Powers, 1776-1887.)

In 1890 (April 1) a conference was held at Madrid, at which the United States was represented, under a statute approved March 6, 1890. (26 Stat. L., p. 17.)

In 1897 (December 1) the first session of a conference under the convention was held at Brussels, at which the United States was represented by two delegates.

This conference is expected to reconvene in the summer of 1898.

From 1887 to the meeting of the conference in Brussels the only material revision of the patent law was the amendment of section 4887, Revised Statutes, approved March 3, 1897, by (1) doing away with the limitation of the term of United States patents by reason of a foreign patent, and by (2) restricting the time within which a patent can be applied for in the United States to seven months after the first application therefor abroad.

It is clear from the above statement that no revision of the patent and trade-mark laws of the United States has been made because of the convention.

The convention provides for certain specific things, e. g., that an applicant for a patent in his own country shall have seven months in which to apply for a patent in all the other countries of the union, during which neither publication, public use, nor importation will defeat the patent. (Any one of these things would defeat a patent if done at any time prior to the application in any of the countries of the union except the United States.)

The United States is the greater gainer by this convention, therefore, since it gives no corresponding privilege in return. It had none to give, since such privileges are open to all, irrespective of treaty.

We have, however, disregarded the convention, so advantageous to our citizens, when a question of priority of invention has arisen between our citizens and those of other countries of the union.

To give other examples would make this report unnecessarily long.

The convention was the subject of a resolution by the patent section of the American Bar Association at its meeting at Cleveland, Ohio, August 27, 1897, urging upon the Government the representation of the United States at the Brussels conference.

This conference will soon reconvene, and our delegates thereto earnestly request that Congress should pass this bill, so that any laws to carry the convention into effect in this country may speedily be enacted, and their position be strengthened before the conference to obtain the concessions which they are instructed to ask.

The present is a time demanding our utmost diligence in the observance of treaty obligations.

In the opinion of your committee, the convention is of advantage to our citizens. Good faith requires that we should put it into effect by statute. (That it is not self-executing, see Opinions of Attorney-General.) Other members of the union have passed laws to carry it into effect.

The subject is somewhat involved and requires presentation to Congress by experts familiar with the French language, in which all the proceedings under the convention have been held, and with our own laws and those of foreign countries relating to industrial property.

The bill demands immediate action because of the approaching second session of the Brussels conference.

The only appropriation made is for the disbursements of the commissioners for copying, postage, and travel, which have been estimated at \$250.